IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

M/s Sohanlal Pungalia v. Asstt.Mining Engineer (Recovery), Bikaner & Anr.

S.B.CIVIL WRIT PETITION NO.4226/1992
under Article 226 of the Constitution of India.

Date of Order : 9th January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.M.Bohra, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The instant petition for writ is directed against the demand made by Assistant Mining Engineer (Recovery), Bikaner for the sum of Rs.3,51,608/- from the petitioner against royalty with regard to excavation of minor mineral for the contract of widening the road from Jodhpur to Pokaran within the kilometer stones from 78 to 102.

The facts necessary for adjudication of present writ petition are that the petitioner is a partnership firm to whom a contract was granted by

Public Works Department for widening of Jodhpur-Pokaran road from kilometer stones No.78 to 102.

A short term permit was granted to the petitioner firm by the Assistant Mining Engineer, Balesar on 13.6.1990 to excavate certain minor minerals required for executing the construction work i.e. of widening the road of Jodhpur to Pokaran. The short term permit was granted subject to the condition of payment of royalty which was assessed as Rs.3,54,830/-. A condition in the short term permit was also mentioned to the effect that the royalty was payable in a tune of 3% to the cost of mineral excavated and used by the petitioner.

The petitioner for certain reasons failed to complete the work of widening of road under the contract referred above. According to the averments contained in the writ petition the work only upto 15% was done by the petitioner and the remaining work was completed by certain other contractors. It is also averred by the petitioner that only 15% of the mineral from the area comprised in the short term permit was excavated and utilised and, therefore, the petitioner firm was responsible to pay royalty only against the minor mineral excavated and utilised by it.

The Assistant Mining Engineer, Balesar under a communication dated 13.9.1991 directed the

petitioner to deposit the amount of Rs.3,54,000/- against royalty in the terms of short term permit. In response to communication dated 13.9.1991 the petitioner submitted a representation dated 27.9.1991 denying his liability to make the payment of the sum of Rs.3,54,000/- against royalty as he completed only 15% of the work granted on contract. The petitioner averred in the representation that the liability to pay entire amount of royalty could not be fixed upon him as the royalty is required to be charged against the mineral excavated and utilised.

By an another communication dated 16.12.1991 the petitioner made a request to the Assistant Mining Engineer, Balesar and also to Public Works Department for verification of the final measurement of work done by him so that a proper assessment of mineral excavated and used could be made. The respondents, according to the petitioner, instead of making proper assessment of the mineral excavated by the impugned order dated 6.4.1992 ordered for recovery of the royalty in the tune of Rs.3,51,608/-. Hence this petition for writ is preferred.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner is required to make the payment of royalty as it was predetermined under the short term permit. According to the respondents the permit was granted to

the petitioner under Rule 63 of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as “the Rules of 1986”) and he was authorised to excavate the mineral from the area specified in the permit. The royalty was predetermined on basis of work contract granted to the petitioner by Public Works Department for widening of road.

Heard counsel for the parties.

Precisely the controversy in the petition is as to whether under the Rules of 1986 can the Mining Department charge royalty from a person in favour of whom a mining lease is granted without assessing mineral excavated. The definition of royalty is prescribed under the Rules of 1986 as under:-

> “Rule 3(xx) “Royalty” means the charge payable to the government in respect of ore or mineral excavated, removed or utilised from any land as prescribed in schedule-1.”

Royalty is required to be assessed in accordance with Rule 38 of the Rules of 1986. Rule 38 of the Rules of 1986 no where prescribes or empowers Mining Department for charging royalty beyond the mineral excavated or utilised by an assessee. Rule 63 of the Rules of 1986 pertains to grant of short term permit with payment of advance royalty from the area specified in the permit. However, it also not permit

the respondents to effect recovery of royalty from a person beyond mineral excavated. As such royalty from the petitioner could have been charged only to the extent the mineral excavated by him. The demand made by the respondents against the royalty without making assessment of the mineral excavated by the petitioner, therefore, is illegal.

Accordingly, this petition for writ is allowed. Impugned order dated 6.4.1992 is hereby quashed. The respondents are directed not to make any recovery from the petitioner against the royalty without assessing the same in accordance with Rule 38 of the Rules of 1986.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.